

**City of Wichita  
City Council Meeting  
December 11, 2018**

**TO:** Mayor and City Council

**SUBJECT:** Design-Build Agreement for Entertainment Venue and Multi-Sport Stadium (District IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Unfinished Business

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**Recommendations:** Approve the design-build agreement.

**Background:** On September 11, 2018, the City Council approved the Ballpark Development and Facility Use Management Agreement memorandums of understanding with YES2NO, New Orleans AAA franchise (Team), for the development of an AAA multi-sport stadium, NBC museum, and associated riverfront improvements. On September 27, 2018, a Request for Proposal for design-build services for the entertainment venue and multi-sport stadium was published and a pre-proposal meeting was held on Friday, October 12. Three design-build (DB) teams submitted on the proposal. On December 4, 2018, the City Council deferred action until December 11, 2018.

**Analysis:** On November 14, 2018 a special Staff Screening and Selection Committee (SSSC) interviewed all three DB teams that responded to the City's request for proposal to provide design-build services for the entertainment venue and multi-sport stadium. The SSSC selected the DB team of JE Dunn comprised of JE Dunn Construction, EBY Construction, Schaefer Johnson Cox Frey Architecture, DLR Group, and Professional Engineering Consultants, PA (PEC) to complete the project. The JE Dunn team was selected for experience and capabilities on other projects, project approach, implementation and ability to meet the schedule, Emerging Business Enterprises/Disadvantaged Business Enterprise participation, and fee and cost proposal. The SSSC also considered the overall presentation, knowledge of Minor League Baseball (MiLB) standards, knowledge of local conditions, and experience of working with local governmental agencies. During the presentation the JE Dunn team came across as a cohesive team, spoke to the due diligence they have completed, including knowledge of ground water conditions, preliminary outreach to local subcontractors, and the ability to marshal subcontractor work within the local market.

The proposed contract is for Phase 1 services which include; survey, geotechnical investigations, design development to 30%, establishment of a Guaranteed Maximum Price (GMP), critical path schedule, and plan for Phase 2. Phase 2 services will encompass completing the project's final design, construction, submitting as-builts and project closeout and will come to the City Council for later approval by amendment to this agreement, setting the GMP and final scope of the project.

The project is to be completed and ready for play for the 2020 MiLB season.

**Financial Considerations:** On October 23, 2018, the City Council approved the City's \$83 million dollar investment into the stadium and surrounding improvements to be funded through a combination of Sales Tax and Revenue (STAR) bonds, Tax Increment Financing (TIF), a Community Investment District (CID), and general obligation funds. The budget set aside for the entertainment venue and multi-sport stadium which includes the stadium and surrounding street and infrastructure network is \$77 million dollars. The remaining \$6 million dollars is for the riverfront improvements and the pedestrian bridge.

**Legal Considerations:** The design-build agreement has been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the design-build agreement and authorize the necessary signatures.

**Attachments:** Design-build agreement.

# **AIA**® Document A141™ – 2014

## **Standard Form of Agreement Between Owner and Design-Builder**

**AGREEMENT** made as of the Eleventh day of December in the year Two Thousand and Eighteen  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, address and other information)

City of Wichita  
455 North Main Street  
Wichita, Kansas 67202

and the Design-Builder:  
(Name, address and other information)

J.E. Dunn-Eby, a Joint Venture  
1001 Locust Street  
Kansas City, Missouri 64106

for the following Project:  
(Name, location and detailed description)

Entertainment Venue and Multi Sport Stadium  
Site bounded by Texas right of way extended east of Sycamore, Maple, Sycamore Streets  
and to the East curbline of existing McLean Street  
Wichita, Kansas

The Owner and Design-Builder agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

*(Paragraphs Deleted)*

Init.

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

#### § 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

The Owner's program for the Project is for the construction of an entertainment venue and multi-sport stadium principally used as a Triple A, Minor League baseball facility built in accordance with Minor League facility standards with flexibility to host other sporting events, outdoor concerts, festivals and community events. The venue shall also include a 7,000 to 10,000 square foot, Hall of Fame Museum to house the National Baseball Congress history in Wichita and related traveling exhibits and certain utility infrastructure improvements and street improvements.

#### § 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

The Owner's design criteria requirements are generally set forth in the Project Description set forth in Exhibit 1 and include the Major League Rules attachment No. 58 (Minor League Facility Standards and Compliance Inspection Procedures) attached as Exhibit 2.

#### § 1.1.3 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

The Project site is approximately Twenty-Two Acres bounded by Texas right of way extended east of Sycamore, Maple, Sycamore Streets and to the East curblin of existing McLean Street, located in the City of Wichita, Kansas.

#### § 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

None

#### § 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

None

#### § 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

The Owner's turnkey budget for the entertainment and multi-sport stadium and Hall of Fame Project is Seventy Five Million Dollars (\$75,000,000). The Owner also has a separate budget for the installation of certain utility

Init.

infrastructure and street improvements of Two Million Dollars (\$2,000,000) to be utilized by the Design Builder for the completion of such infrastructure and street improvements currently contemplated for McLean Street. Such utility infrastructure and street improvements may be changed by Owner to include Texas Street and such change, if any, and associated budget increase, if any, would be mutually agreed upon by Design Builder and Owner prior to the performance of the Scope of Work associated with such utility infrastructure and street improvements.

**§ 1.1.7 The Owner's design and construction milestone dates:**

**.1 Design phase milestone dates:**

To be determined.

**.2 Submission of Design-Builder Proposal:**

The Project shall be designed and constructed in multiple phases. Each phase will be separately permitted. The Owner has identified two phases relating to Design Builders Scope of Work. Phase I and Phase II as set forth in Exhibit 6.

In addition, in order to attempt to meet the Owner's Substantial Completion date for the project Design Builder will provide the Owner with multiple Guaranteed Maximum Proposals. Design Builder initially will provide a GMP for excavation and site underground utilities for the Project. A second GMP proposal will be provided by the Design Builder to the Owner upon completion of thirty percent (30%) Design Development Drawings for the Project and each GMP proposal shall contain the information required pursuant to Section 4.4.1 hereof and will be for the balance of the Project and shall contain separate GMP allocations for costs associated with design and construction for the utility infrastructure and adjacent street improvements.

**.3 Phased completion dates:**

To be defined in future Amendment.

**.4 Substantial Completion date:**

To be determined. The multisport must be completed and ready for team use by March 15, 2020.

**.5 Other milestone dates:**

To be defined in future Amendment, if any.

**§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:**

*(List name, address and other information.)*

**.1 Architect**

Schaefer Johnson Cox Frey Architecture Inc.  
257 North Broadway  
Wichita, Kansas 67202

**.2 Consultants**

To be retained by Architect.

**.3 Contractors**

Not applicable.

Init.

**§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:**

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

None

**§ 1.1.10** The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 1.1.10.1** If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

**§ 1.1.11** If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 1.1.12** If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 1.1.12.1** Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols agreed upon in writing, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**§ 1.2 Project Team**

**§ 1.2.1** The Owner identifies the following representative in accordance with Section 7.1.1:

*(List name, address and other information.)*

Paul Gunzelman  
Assistant City Engineer  
455 North Main Street  
Wichita, Kansas 67202

**§ 1.2.2** The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

*(List name, address and other information.)*

To be determined.

**§ 1.2.3** The Owner will retain the following consultants and separate contractors:

*(List discipline, scope of work, and, if known, identify by name and address.)*

To be determined.

**§ 1.2.4** The Design-Builder identifies the following representative in accordance with Section 3.1.2:

*(List name, address and other information.)*

Scott Sherry  
J.E. Dunn-Eby, a Joint Venture  
1001 Locust Street  
Kansas City, Missouri 64106

**§ 1.2.5** Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 14.4

☒ Litigation in the District Court for Sedgwick County, Kansas

☐ Other: *(Specify)*

### § 1.4 Definitions

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. In the event of any conflict between the Design-Build Amendment and any other Design-Build Document, the Design-Build Amendment shall supersede such other Design-Build Document. In the event, of multiple or phased Design-Build Amendments, the terms of the latest Design-Build Amendment shall supersede conflicting terms of any prior Design-Build Amendment.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.5.1 The Drawings** are the graphic and pictorial portions of the Design-Build Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.4.5.2 The Specifications** are that portion of the Design-Build Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Design-Builder in dividing the Work among contractors or in establishing the extent of Work to be performed by any trade. Unless otherwise stated in the Design-Build Documents, words that have well-known technical or construction industry meanings are used in the Design Build Documents in accordance with such recognized meanings.

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**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 1.4.8 Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

**§ 1.4.14 Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

**§ 1.4.16 Team.** The Triple A baseball team, currently known as the New Orleans Baby Cakes, relocating to Wichita, Kansas.

**§ 1.4.17 Owner's Representative ("OR").** The Owner shall retain an Owner's Representative ("OR") lawfully licensed to practice architecture or engineering, as is appropriate for the Project. The OR shall be licensed in Kansas. That person or entity is identified as the OR in the Agreement and is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.17.1** If the employment of the OR terminates, the Owner shall employ a successor whose status under the Design-Build Documents shall be that of the OR.

**§ 1.4.18 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 14.2. The Initial Decision Maker is the OR, who shall not show partiality to the Owner or Design-Builder and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.4.19 Duties, responsibilities, and limitations of authority of the OR as set forth in the Design-Build Documents shall not be restricted, modified, or extended without written consent of the Owner, Design-Builder, and OR. Consent shall not be unreasonably withheld.

## **ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS**

### **§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment**

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Paragraph Deleted)*

Payment for Preconstruction Phase Services for Design-Builder only shall be lump sum of Seventy Thousand Dollars (\$70,000). In addition, Owner agrees to reimburse Design-Builder for the design costs of the Architect and its consultants on a monthly basis until the OR and Design-Builder determine that the Architect and its consultants have achieved thirty percent (30%) Design Development Documents. Phase I Services (See Exhibit 6) – The Design Costs for design services for excavation and underground site utilities work shall be deducted from the

*(Paragraph Deleted)*

*(Table Deleted)*

total Design Budget for  
the

*(Paragraph Deleted)*

Project of Five Million One Hundred Thirty-Seven Thousand Eight Hundred Sixty-Eight Dollars  
(\$5,137,868) and

Sixty Thousand Dollars (\$60,000) of due diligence funds with the

*(Paragraphs Deleted)*

balance of such fees included in the

Phase II Services (see Exhibit 6). Both the Preconstruction and Construction Phase Services will be contained in the Design-Builder's final Guaranteed Maximum Price.

*(Paragraphs Deleted)*

§ 2.1.2 Paragraph deleted.

§ 2.1.3 Paragraph deleted.

### **§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate provided by Statute.

*(Paragraph Deleted)*

§ 2.1.4.2 Records of Reimbursable Expenses and services, if any, performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

### **§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

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## **ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

### **§ 3.1 General**

**§ 3.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.6** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

**§ 3.1.7** The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

### **§ 3.1.8 Progress Reports**

**§ 3.1.8.1** The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

**§ 3.1.8.2** In addition, where the Contract Sum is based upon the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

**§ 3.1.9 Design-Builder's Schedules**

**§ 3.1.9.1** The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.9.2** The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

**§ 3.1.10 Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall: (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1; (2) allow the Owner reasonable time to review Submittals; and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in the Guaranteed Maximum Price or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has: (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by

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the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.12 Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Upon receipt of written notice of any such defects or failures to conform that appear or are discovered within one year on the Entertainment and Multisport Stadium and Hall of Fame Project and within two years of the Utility Infrastructure and Street Improvements portion of the Project or such longer periods as may be specified elsewhere in the Design-Build Documents, Design-Builder shall, at no cost to the Owner, (unless allowed under other provisions of this Agreement) promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with Design-Build Documents requirements and remedy any damage to other parts of the Work resulting therefrom. If the Design-Builder fails to make such replacements or corrections, the Owner may do so and charge to or otherwise recover from the Design-Builder its related actual costs and administrative charges.

**§ 3.1.12.1** Neither Final Acceptance, payment, nor any provisions in the Drawings or Specifications shall relieve the Design-Builder of his responsibilities under this warranty. Design-Builder shall extend to the Owner any provisions of warranties of contractors or materialmen more favorable than this warranty and shall provide Owner copies of all such warranties.

**§ 3.1.12.2** The Design-Builder agrees to assign to the Owner, at the time of Final Acceptance of the Work, any and all required manufacturers' warranties, to the extent assignable, relating to materials used in the Work and further agrees to perform the Work with reasonable care so as to preserve any and all such manufacturers' warranties.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the OR, Owner, including the Owner's employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor,

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or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **§ 3.1.15 Contingent Assignment of Agreements**

- § 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

### **ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

#### **§ 4.1 General**

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

**§ 4.1.2** The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

#### **§ 4.2 Evaluation of the Owner's Criteria**

**§ 4.2.1** The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities including the Owner's Oversight Committee and Owner's Committee to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

**§ 4.2.2** After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget; and
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner.

*(Paragraphs Deleted)*

**§ 4.2.3** The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### **§ 4.3 Preliminary Design**

**§ 4.3.1** Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions, including a comparative analysis of the Project to other AAA or AA ballparks;
- .2 Site plan;
- .3 Building plans; sections and elevations, detailed seating summary;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems, require narrative descriptions and one-line diagrams for each MEP/IT system;
- .6 Outline specifications or sufficient drawing notes describing construction materials; and
- .7 Estimated cost of construction.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

**§ 4.3.2** The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### **§ 4.4 Design-Builder's Proposal**

**§ 4.4.1** Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal applicable to the appropriate phase to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based submitted in both hard copies and requested by Owner and pdf format;
- .2 The proposed Guaranteed Maximum Price, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, and Allowances, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

**§ 4.4.2** Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

**§ 4.4.3** If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

### **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

#### **§ 5.1 Construction Documents**

**§ 5.1.1** Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

**§ 5.1.2** The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the

Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

## **§ 5.2 Construction**

**§ 5.2.1 Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

**§ 5.2.2** If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

**§ 5.2.3** The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

**§ 5.2.4** The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 5.2.5 Owner's Representative Administration of the Agreement**

**§ 5.2.5.1** The OR will provide administration of the Agreement as described in the Design-Build Documents and will be an Owner's representative during construction until the date the OR issues the final Certificate for Payment. The OR will have authority to act on behalf of the Owner only to the extent provided in the Design-Build Documents.

**§ 5.2.5.2** The OR will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Design-Build Documents. However, the OR will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The OR will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

**§ 5.2.5.3** On the basis of the site visits, the OR will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Design-Build Documents, (2) known deviations from the most recent construction schedule submitted by the Design-Builder, and (3) defects and deficiencies observed in the Work. The OR will not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The OR will not have control over or charge of, and will not be responsible for acts or omissions of, the Design-Builder, contractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 5.2.6 Communications**

The Owner and Design-Builder shall include the OR in all communications that relate to or affect the OR's services or professional responsibilities. The Owner shall promptly notify the OR of the substance of any direct communications between the Owner and the Design-Builder otherwise relating to the Project. Communications by and with the OR's consultants shall be through the OR. Communications by and with contractors and suppliers shall be through the Design-Builder. Communications by and with separate contractors shall be through the Owner. The Design-Build Documents may specify other communication protocols.

**§ 5.2.6.1** Based on the OR's evaluations of the Design-Builder's Applications for Payment and the Critical Path Method Construction Schedule, the OR will review and certify the amounts due the Design-Builder and will issue Certificates for Payment in such amounts and review the Critical Path Method Construction Schedule and either provide to the Owner his approval of the Schedule or return that Schedule to the Design-Builder for corrective action.

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§ 5.2.6.2 The OR and Owner will conduct inspections to determine progress towards the date of Project Substantial Completion and the date of Final Acceptance as set by the Critical Path Method Construction Schedule. The OR will receive from the Design-Builder and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Design-Build Documents and assembled by the Design-Builder. The OR will also issue a final Certificate of Payment upon compliance with the requirements of the Design-Build Documents.

§ 5.2.6.3 If the Owner and OR agree, the OR will provide one or more Project representatives to assist in carrying out the OR's responsibilities at the site.

§ 5.2.6.4 The OR will interpret and decide matters concerning performance under, and requirements of, the Design-Build Documents on written request of either the Owner or Design-Builder. The OR's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 5.2.6.5 Interpretations and decisions of the OR will be consistent with the intent of, and reasonably inferable from, the Design-Build Documents and will be in writing. When making such interpretations and decisions, the OR will endeavor to secure *faithful performance* by both Owner and Design-Builder, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

### § 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 5.4 Taxes

The Owner will provide the Design Builder with a Sales Tax Exemption Certificate for the Project which will be used by the Design Builder and its Contractors for the purchase of materials for the Project.

### § 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. Such permits, fees, licenses, and inspections shall be reimbursed to Design-Builder as a Cost of Work.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.2.1 The Design-Builder shall be responsible for surveys describing physical characteristics, and known utility locations for the site of the Project. The Design-Builder shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner and OR before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The OR shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall

recommend an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both. If the OR determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the OR shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the OR's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters and recognizes human remains, or the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### **§ 5.6 Allowances**

**§ 5.6.1** The Design-Builder shall include in the Guaranteed Maximum Price all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

**§ 5.6.2** Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Guaranteed Maximum Price but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

#### **§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.1.1** The Design-Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder. The Superintendent or his designated representative shall be on site at all times work is in progress.

**§ 5.7.1.2** The Design-Builder, as soon as practicable after award of the Contract, shall notify the Owner and OR of the name and qualifications of a proposed superintendent. Within 14 calendar days of receipt of the information, the OR may notify the Design-Builder, stating whether the Owner (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.1.3** The Design-Builder shall not employ a proposed superintendent to whom the Owner or OR has made reasonable and timely objection. The Design-Builder shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 5.7.1.4** The Superintendent shall prepare daily construction reports for every calendar day until Final Acceptance. Such reports shall be in a form reasonably acceptable to Owner and OR and shall list the individual Contractors,

subcontractors, suppliers, or other trades or crafts or other personnel present on the site each day, whether in the direct employ of the Design-Builder or not. It shall identify the number of types of such personnel, and it shall describe in relative detail the work accomplished by each such Contractor, subcontractor, supplier, trade or craft on each day. Such reports shall be furnished monthly to the OR at the time and for the period covered by each application for payment. If no application is submitted, the report will be submitted on the first day of each month for the month preceding.

**§ 5.7.2** A Contractor is a person or entity who has a direct contract with the Design-Builder to perform a portion of the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a contractor or an authorized representative of the contractor. The term "Contractor" does not include a separate contractor or the subcontractors of a separate contractor.

**§ 5.7.2.1** A subcontractor is a person or entity who has a direct or indirect contract with a Contractor to perform a portion of the Work at the site. The term "subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor.

**§ 5.7.2.2 Award of contracts for portions of the Work**

Unless otherwise stated in the Design-Build Documents, the Design-Builder, as soon as practicable after its selection by the Owner, shall invite sealed bids for all trade divisions of the Work by publication in the official City paper, on the City's procurement website, and by any other commercially reasonable means. The Design-Builder will use its best efforts to develop local trade contractors' interest in bidding on the Work. To the extent reasonably possible, Design-Builder should divide the Work into trade packages of sufficient size so as to be accessible to emerging business enterprises. With the prior written consent of the Owner, certain contractors and specialty contractors may be selected during the preconstruction based upon a qualification process administered by the Design-Builder. The selection process will evaluate experience with similar types of projects/systems and an evaluation of proposed fee structures. Design-Builder will enter into an open book GMP contract and such Contractors would be subject to the same restrictions on allowable costs and the same right of audit shall apply to Contractors as applies to Design-Builder in this Agreement. With respect to all other Contractors, the Design-Builder shall award each package of the Work to the lowest responsive and responsible bidder meeting Design-Builder's qualification requirements, including bonding requirements, if any. In lieu thereof, the Design-Builder may reject all bids for one or more divisions of the Work, reorganize the Project and re-bid the portions of the Work not awarded. The Owner may increase the Contract Time allowed for any such re-bidding.

**§ 5.7.2.3 Contractual Relations**

The Design-Builder shall require each Contractor, to the extent of the Work to be performed by the Contractor, to be bound to the Design-Builder in a written agreement by the terms of the Design-Build Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Contractor's Work that the Design-Builder, by these Design-Build Documents, assumes toward the Owner and OR. Each contract agreement shall preserve and protect the rights of the Owner under the Design-Build Documents with respect to the Work to be performed by the Contractor so that contracting thereof will not prejudice such rights, and shall allow to the Contractor, unless specifically provided otherwise in the contract agreement, the benefit of all rights, remedies, and redress against the Design-Builder that the Design-Builder, by the Design-Build Documents, has against the Owner. Where appropriate, the Design-Builder shall require each contractor to enter into similar agreements with contractors. The Design-Builder shall make available to each proposed Contractor, prior to the execution of the contract agreement, copies of the Design-Build Documents to which the contractor will be bound. Contractors will similarly make copies of applicable portions of such documents available to their respective proposed subcontractors. All contracts shall be in writing.

**§ 5.7.3** If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.4** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to

the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.5** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Guaranteed Maximum Price and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

#### **§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall make available, at the Project site, the Design-Build Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the OR and Owner, and delivered to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 5.8.1** Design Builder, with the representatives of the Owner shall photo document the work site and its perimeter prior to Work beginning on the site. Each photo shall be dated and placed on a CD submitted to the Owner along with other pre-construction documents and another CD maintained at the site. The Superintendent or other appropriate Design Builder's representative shall take preconstruction photographs of the site and photographs of the status and quality of the Work. Such photographs will be digital photographs and shall consist of not less than 24 photographs per set. The photographs shall be fair and reasonable photographic representations of the Work with written description of what each photograph is intended to show. Digital photographs shall be at least 1280 x 960 pixels, low-compression quality. The Design Builder shall furnish one set of photographs semi-monthly to the Owner and commencing with the construction start taken approximately on the 1<sup>st</sup> and 15<sup>th</sup> of each month. All photos shall be date stamped.

#### **§ 5.9 Use of Site**

**§ 5.9.1** The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

**§ 5.9.2** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Design-Builder.

**§ 5.9.3** The Design-Builder and any entity for which the Design-Builder is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

**§ 5.9.4** Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Design-Build Documents, Design-Builder shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Building in the event of partial occupancy, as more specifically described in Section 9.9.

**§ 5.9.5** Without prior approval of the Owner, the Design-Builder shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than

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those designated by Owner. Construction workers may smoke or use other tobacco products only in designated areas. Without limitation of any other provision of the Design-Build Documents, the Design-Builder shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site as amended from time to time. The Design-Builder shall immediately notify the Owner in writing if, during the performance of Work, the Design-Builder finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations.

#### **§ 5.10 Cutting and Patching**

**§ 5.10.1** The Design-Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Design-Build Documents.

**§ 5.10.2** The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter construction by the Owner or a separate contractor except with written consent of the Owner and of the separate contractor. Consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold, from the Owner or a separate contractor, its consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

The Design-Builder shall provide the Owner, the OR, and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site. The Owner shall be allowed to take photographs and video at all times and locations on the Project.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

##### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### **§ 5.14 Mutual Responsibility**

**§ 5.14.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ 5.14.1.1** The Design-Builder shall assume general coordination and direction of the Project. Each Contractor shall cooperate with other Contractors on the Work and shall install their Work in sequence to facilitate and not delay the installations of such other Contractors. Neither the OR nor the Owner are the coordinators or the expeditors of the Work of the various contracts.

**§ 5.14.2** If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner and OR, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

**§ 5.14.3** The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction. The Owner shall have only such liability to the Contractor as is established from deviation from a contemporaneously updated Critical Path Construction Schedule.

**§ 5.14.4** The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

**§ 5.14.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### **§ 5.15 Owner's Right to Clean Up**

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### **ARTICLE 6 CHANGES IN THE WORK**

#### **§ 6.1 General**

**§ 6.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

**§ 6.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

**§ 6.1.3** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### **§ 6.2 Change Orders**

A Change Order is a written instrument prepared by the Design-Builder and signed by the OR, Owner and Design-Builder stating their agreement upon all of the following:

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- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluations;
- .2 By unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Documented net cost of the following items involved in the change: Labor, including foremen, materials for the Work, rental or ownership costs of construction plant and equipment, insurance and bonds, Social Security; old age, unemployment, health, welfare, pensions and apprenticeship training contributions and any other Cost of the Work affected thereby.

§ 6.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and Contract Time. Design-Builder shall include the Work covered by such Change Orders in Applications for payments as if such Work were originally part of the Design-Build Documents.

### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the OR and Owner directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Guarantee Maximum Price or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

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§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in this provision shall mean the Cost of the Work as defined in the Guaranteed Maximum Price Amendment and the term "fee" shall mean the Design-Builder's Change Order Fee as defined in the Guaranteed Maximum Price Amendment. In calculating adjustments to contracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in this provision shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

Adjustments to contracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those contracts.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 When the Owner and Contractor agree with a determination made by the OR concerning the adjustments in the Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the OR will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

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**§ 7.1.1** The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

*(Paragraph Deleted)*

**§ 7.2 Information and Services Required of the Owner**

**§ 7.2.1** The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

**§ 7.2.2** The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide legal limitations for the site of the Project, and a legal description of the site under the Owner's control.

**§ 7.2.3** The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

**§ 7.2.4** The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

**§ 7.2.5** The services, information and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

**§ 7.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

**§ 7.2.7** The Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

**§ 7.2.8** The Design-Builder shall not commence the Work until the Owner issues a written Notice to Proceed. At the Owner's discretion, it may issue notices to proceed for each phase of the Project. If one Notice to Proceed is issued it shall be both administrative and to begin construction. If two Notices to Proceed are issued, the first Notice to Proceed would be administrative, allowing the Design-Builder to enter into subcontracts, develop and submit schedules, develop and submit shop drawings, etc. If the Owner issues notices to proceed for each phase, the notice issued will be for the specific phase identified in the notice.

**§ 7.2.9** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Design-Builder shall keep the information confidential and shall not disclose it to any other person. However, the Design-Builder may disclose "confidential" information, after seven (7) calendar days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Design-Builder may also disclose "confidential" information to its employees, consultants, sureties, contractors and their employees, subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

**§ 7.2.10** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

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**§ 7.2.11** The Design-Builder shall furnish the services of geotechnical engineers or other consultants for investigation of subsurface conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.12** The Design-Builder and Owner shall purchase and maintain insurance as set forth in Exhibit B.

### **§ 7.3 Submittals**

**§ 7.3.1** The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 7.3.2** Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

**§ 7.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

**§ 7.5** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**§ 7.6** The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 7.7** The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

### **§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

#### **§ 7.9 Owner's Right to Carry Out the Work**

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

**§ 7.9.1** The rights stated in this Article 7 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner (1) granted in Design-Build Document, (2) at law or (3) in equity.

**§ 7.9.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Design-Build Documents.

#### **ARTICLE 8 TIME**

##### **§ 8.1 Progress and Completion**

**§ 8.1.1** Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.1.2** The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

**§ 8.1.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

##### **§ 8.2 Delays and Extensions of Time**

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, the OR, or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties adverse weather conditions documented in accordance with Section 8.3.4 or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ 8.2.2** Claims relating to time shall be made in accordance with applicable provisions of Article 14.

**§ 8.2.3** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

**§ 8.2.4** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

**§ 8.2.5** The date of beginning and completion date hereunder are essential conditions of this Contract.

**§ 8.2.6** The time for completion is a reasonable time, and already takes into consideration the average climatic range and other conditions.

**§ 8.2.7** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.2.8** Claims relating to time shall be made in accordance with applicable provisions of Section 14.1.6.1. Design-Builder shall submit documentation for days lost to abnormal inclement weather for each month within 14 calendar days of the following month. Documentation shall include, but not be limited to, the following:

- .1 Design-Builder's Daily Log indicating activities planned and performed for days under consideration for days lost to abnormal inclement weather.
- .2 Local Climatological Data from NOAA, National Climate Data Center.
- .3 Design-Builder's most recent Critical Path Method Schedule.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Guaranteed Maximum Price**

The Guaranteed Maximum Price is stated in the Design-Build Amendment.

**§ 9.1.1** The Guaranteed Maximum Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Design-Build Documents. The Design-Builder understands and agrees that its only rights to moneys from the Owner is the Guaranteed Maximum Price, as adjusted by Change Orders. The Design-Builder shall have no right for any additional moneys based upon any other legal theory of recovery, including but not limited to the theories of quantum meruit, implied contract, oral contract, separate contract, promissory estoppel, negligence, tort, comparative fault with respect to payment for the Work.

**§ 9.1.2** If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Where the Guaranteed Maximum Price is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the OR and Owner a schedule of values allocating the entire Guaranteed Maximum Price to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the OR and Owner may require. This schedule, unless objected to by the OR and Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. Any changes to the schedule of values shall be submitted to the OR and supported by such data to substantiate its accuracy as the OR may require, and unless objected to by the OR, shall be used as a basis for reviewing the Design-Builder's subsequent Applications for Payment. The Design-Builder in preparing the schedule of values recognizes a fiduciary responsibility to Owner to fairly and reasonably apportion values and that Design-Builder will be responsible for audit sanctions or other losses to Owner attributable to any instance of "front end loading".

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work in accordance with the schedule of values. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the OR or Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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**§ 9.3.2.1 Payment for Materials on Hand:** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Design-Build Documents and are delivered to acceptable sites on the Owner's property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- 1) The material has been stored or stockpiled in a manner acceptable to the Owner at or on an approved site.
- 2) The Design-Builder has furnished the Owner with acceptable evidence of the quantity and quality of such stored or stockpiled materials. The location of the stored materials will be specifically provided to the Owner and OR as may be applicable.
- 3) The Design-Builder has furnished the Owner with satisfactory evidence that the material and transportation costs have been paid.
- 4) The Design-Builder has furnished the Owner legal title (proof of waiver of all liens and encumbrances of any kind from the supplier) to the material so stored or stockpiled.
- 5) The Design-Builder has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such material at any time prior to use in the Work.
- 6) Color photos of the stored materials are provided. Photo size to be 8.5 x 11 inches.

The transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Design-Builder of his responsibility for furnishing and placing such materials in accordance with the requirements of the Contract.

In no case will the amount of partial payments for materials on hand exceed the agreed price for such materials or the agreed price for the Agreement item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

No partial payment shall bind the Owner to the acceptance of any material or Work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment.

The Design-Builder shall bear all costs associated with the partial payment of stored or stockpiled materials.

**§ 9.3.2.2** Until the Work is Substantially Complete, the Owner will pay 95% of the amount due the Design-Builder on account of progress payments. Upon Substantial Completion the Owner will retain 150% of the value of remaining work, as determined by the OR. Upon Final Acceptance by Owner, and in absence of other good and sufficient reasons, the OR will (on presentation by the Design-Builder of Consent of Surety for each Application) authorize any remaining partial payments to be paid in full.

**§ 9.3.2.3** Title shall pass to Owner for all the Work covered by an Application for payment notwithstanding the retention of retainage or the otherwise reduction in part of payment. However, Design-Builder shall bear all risk of loss for the Work or the Project until such time as the same is 1) Substantially Complete, 2) occupied by the Owner, 3) under the Owner's control, and 4) transferred from builders risk to Owner's permanent insurance.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The OR will, within seven (7) calendar days after receipt of the Design-Builder's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Design-Builder; or (2) issue to the Owner a Certificate for Payment for such amount as the OR determines is properly due, and notify the Design-Builder and Owner of the OR's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Design-Builder and Owner of the OR's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the OR to the Owner, based on the OR's evaluation of the Work and the data in the Application for Payment, that, to the best of the OR's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Design-Build Documents, and that the Design-Build is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Design-Build Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Design-Build Documents prior to completion, and to specific qualifications expressed by the OR. However, the issuance of a Certificate for Payment will not be a representation that the OR has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Contractors and suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment; or (4) made examination to ascertain how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The OR may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the OR is unable to certify payment in the amount of the Application, the OR will notify the Design-Builder and Owner as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

**§ 9.5.4** When either party disputes the OR's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 14.

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## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents and shall so notify the OR.

**§ 9.6.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

**§ 9.6.3** The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Design-Builder, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the OR and Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

**§ 9.6.4** The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

**§ 9.6.5** Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

*(Paragraph Deleted)*

## **§ 9.7 Failure of Payment**

If the OR does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, or if the Owner does not pay Design-Builder within seven (7) calendar days after the date established in the Design-Build Documents, the amount certified by the OR or awarded by binding dispute resolution then the Design-Builder may, upon seven additional days' written notice to the Owner and OR, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

**§ 9.7.1** If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Guaranteed Maximum Price and may, in the Owner's sole discretion, elect to: (1) deduct an amount equal to that to which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (2) issue a written notice to the Design-Build reducing the Guaranteed Maximum Price by an amount equal to that to which the Owner is entitled subject to Design-Builder's rights under Article 14.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use;

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provided, however, that as a condition precedent to Substantial Completion, the Owner has received all temporary certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

**§ 9.8.2** When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

**§ 9.8.3** Upon receipt of the Design-Builder's list, the OR shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the OR's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the OR to determine Substantial Completion.

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.6** The Certificate of Substantial Completion shall be submitted to the Owner and Design-Builder for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted to retain 150% of the value for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents. Such adjustment shall be limited to 150% of the value of incomplete or defective Work.

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder or if no agreement is reached by decision of the OR.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.



## **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Design-Builder's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the OR will promptly make such inspection. When the OR finds the Work acceptable under the Design-Build Documents and the Design-Build Documents fully performed, the OR will promptly issue a final Certificate for Payment stating that to the best of the OR's knowledge, information and belief, and on the basis of the OR's on-site visits and inspections, the Work has been completed in accordance with the Design-Build Documents and that the entire balance found to be due the Design-Builder and noted in the final Certificate is due and payable. The OR's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Design-Builder's being entitled to final payment have been fulfilled. All warranties shall be assembled and delivered by the Design-Builder to the OR as part of the final Application for Payment. The final Certificate for Payment will not be issued by the OR until all warranties have been received and accepted by the Owner.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. The above submissions are a condition precedent to final acceptance by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 audits performed by the Owner, if permitted by the Design-Build Documents, after final payment; or
- .5 any contractual or other requirement which may require performance in whole or in part after final payment or any improper action by Design-Builder whose existence was not actually discovered until after final payment.

**§ 9.10.5** Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

**§ 10.2.3** The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures to protect any property adjacent to the Project and improvements therein, including property and improvements of Owner. Any damage to such property or improvements shall be promptly repaired by the Design-Builder.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel. When use or storage of hazardous materials or equipment or unusual construction methods is necessary, the Design-Builder shall give the Owner and the OR reasonable advance notice. The use of explosives is prohibited.

**§ 10.2.5** The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. The Design-Builder may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or OR or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

**§ 10.2.6** The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner and OR.

**§ 10.2.7** The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable

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time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.3 Hazardous Materials**

**§ 10.3.1** The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

**§ 10.3.2** Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred, except to the extent such remediation is made necessary by the negligence of Design-Builder.

### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

## **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

### **§ 11.1 Uncovering of Work**

The OR and Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Guaranteed Maximum Price, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate. If a portion of the Work is covered contrary to the OR's request or the inspecting jurisdiction's requirements or to requirements specifically expressed in the Design-Build Documents, it must, if requested in writing by the OR, be uncovered for the OR's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

### **§ 11.2 Correction of Work**

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the OR and Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

**§ 11.2.1.1** If prior to date of Substantial Completion, the Design-Builder, a Contractor or anyone for whom either is responsible damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical devices, the Design-Builder shall cause such item to be restored at no expense to the Owner.

### **§ 11.2.2 After Substantial Completion**

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

**§ 11.2.2.2** The warranty period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 11.2.2.3** Paragraph deleted.

**§ 11.2.3** The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ 11.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the warranty period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to

correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### **§ 11.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### **ARTICLE 12 COPYRIGHTS AND LICENSES**

**§ 12.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications. Upon payment for the Instruments of Service all such Instruments of Service shall be owned by the Owner who shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Owner, and any other person or entity providing services or work for any of them.

All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Design-Builder's Contractor, subcontractors, sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

**§ 12.2** Paragraph deleted.

**§ 12.3** Upon transfer of ownership under Section 12.1 the Owner grants the Design-Builder, its Architect, Contractors, subcontractors, materialmen and any of their agents a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. The license granted under this section permits the Design-Builder to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Owner rightfully terminates this Agreement for cause as provided in Section 13.2.2 or 13.2.3 the license granted in this Section 12.3 shall terminate. Prior to such transfer, the author grants the Design-Builder and others listed above a limited license for the same purpose.

**§ 12.3.1** Paragraph deleted.

**§ 12.3.2** In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

### **ARTICLE 13 TERMINATION OR SUSPENSION**

#### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

**§ 13.1.1** If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written

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notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.2** If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

**§ 13.1.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 13.1.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

**§ 13.1.6** In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

**§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

**§ 13.2.1 Termination by the Design-Builder**

**§ 13.2.1.1** The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

**§ 13.2.1.2** The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 13.2.1.3** If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

**§ 13.2.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to

matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

#### **§ 13.2.2 Termination by the Owner for Cause**

##### **§ 13.2.2.1 The Owner may terminate the Agreement if the Design-Builder**

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors or suppliers in accordance with the respective agreements between the Design-Builder and the Contractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents;
- .5 breaches any warranty made by the Design-Builder under or pursuant to the Design-Build Documents;
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Design-Builder's ability to complete the Work in compliance with all the requirements of the Design-Build Documents;
- .7 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) calendar days, except as permitted under the Design-Build Documents; or

**§ 13.2.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

**§ 13.2.2.4** If the unpaid balance of the Guaranteed Maximum Price exceeds costs of finishing the Work including compensation for the ORs services and expense made necessary thereby and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract. The amount to be paid to the Design-Builder or Owner, as the case may be, shall be certified by the OR, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 13.2.3 Suspension by the Owner for Convenience**

**§ 13.2.3.1** The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 13.2.3.2** The Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Guaranteed Maximum Price shall address insurance, bonds and profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract, all other provisions of the Agreement being superior to this subsection.

#### **§ 13.2.4 Termination by the Owner for Convenience**

**§ 13.2.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 13.2.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

**§ 13.2.4.3** In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and Fee earned on such Work, and costs incurred by reason of such termination, along

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with One percent (1%) of the uncompleted balance of the Guaranteed Maximum Price not to exceed Ten Thousand Dollars (\$10,000) for reasonable overhead and profit on the Work not executed.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION**

#### **§ 14.1 Claims**

**§ 14.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 14.1.2 Time Limits on Claims.** The Owner and Design-Builder shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, within the period specified by applicable law.

#### **§ 14.1.3 Notice of Claims**

**§ 14.1.3.1 Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The writing which complies with this requirement is a letter specifically directed to the OR and Owner, describing the event, the date of the event, and the nature and, if known, amount of the claim.

**§ 14.1.3.2 Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

**§ 14.1.3.3 Notice of Claims as provided in Section 14.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.**

**§ 14.1.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ 14.1.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 14.1.6 Claims for Additional Time**

**§ 14.1.6.1** If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, supported by the appropriate Critical Path Method Construction Schedule. In the case of a continuing delay, only one Claim is necessary.

**§ 14.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Only inclement weather more severe than as documented in the current Comparative Climate Data issued by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, preventing all Critical Path Work at the Project site, will be considered by the OR to be abnormal.

#### **§ 14.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### **§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Section B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

#### **§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the OR shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the OR will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the OR may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the OR in rendering a decision. The retention of such persons shall be at the Owner's expense.

**§ 14.2.4** If the OR requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the OR when the response or supporting data will be furnished or (3) advise the OR that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the OR will either reject or approve the Claim in whole or in part.

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Guaranteed Maximum or Contract Time or both. The initial decision shall be non-binding on the parties and subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. The Guaranteed Maximum Price and Contract Time shall be adjusted in accordance with the OR's decision, subject to the right of either party to proceed in accordance with this Article 14. The OR will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 14.2.6** Either party may file for mediation of an Initial Decision at any time.

*(Paragraph Deleted)*

**§ 14.2.7** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

*(Paragraph Deleted)*

### **§ 14.3 Mediation**

**§ 14.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to litigation.

**§ 14.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. If necessary to avoid the running of a statute of limitations or statute of repose, litigation may be filed concurrently with a request to mediate, which concurrent filing and request shall not violate the condition precedent in Section 14.3.1.

**§ 14.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

### **§ 15.1 Governing Law**

The Design-Build Documents shall be governed by the law of the State of Kansas, without regard to its choice of law

provisions, to specifically  
(Paragraphs Deleted)

include the Kansas Fairness in Public Construction Contract Act, as applicable. Owner and Design-Builder agree to jurisdiction in the State of Kansas and venue in Sedgwick County District Court.

(Paragraphs Deleted)

### **§ 15.2 Successors and Assigns**

**§ 15.2.1** The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 15.2.2** Paragraph deleted.

**§ 15.2.3** If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 15.3** Paragraph deleted.

(Paragraph Deleted)

### **§ 15.4 Rights and Remedies**

**§ 15.4.1** Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

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**§ 15.4.2** No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **§ 15.5 Tests and Inspections**

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the OR timely notice of when and where tests and inspections are to be made so that the OR may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

**§ 15.5.2** If the OR or public authorities having jurisdiction determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the OR will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the OR, and the Design-Builder shall give timely notice to the OR of when and where tests and inspections are to be made so that the OR may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those repeated procedures and compensation for the OR's services and expenses shall be at the Design-Builder's expense.

**§ 15.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ 15.5.5** If the OR is to observe tests, inspections or approvals required by the Design-Build Documents, the OR will do so promptly and, where practicable, at the normal place of testing.

**§ 15.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

*(Paragraphs Deleted)*

### **§ 15.7 Capitalization**

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 15.8 Interpretation**

**§ 15.8.1** In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 15.8.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**§ 15.9** Design-Builder is not a licensed or authorized architect or engineer and Owner acknowledges that it is contracting with Design-Builder to merely furnish, but not to perform, design services. Owner further acknowledges that Design-Builder will subcontract all design services and such services shall be performed by licensed design professionals, duly authorized and registered to render such services in the state in which the Project is located.

With this understanding, Owner waives any defense to an action by Design-Builder to enforce this Agreement

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which defense relates to Design-Builder's authorization to render design services in the state in which the Project is located.

**§ 15.10** Owner agrees that Owner's recovery for claims of professional errors and omissions (under contract, tort or any other theory of law) shall be limited to the amount recoverable from the design professionals retained by the Design-Builder, including errors and omissions insurance coverage carried by the Architect and the other design professionals retained by the Design-Builder, plus the Fee paid to the Design-Builder on the cost of those design services provided by Design-Builder. Owner shall be a third party beneficiary of the Agreement between Design-Builder and Architect or other design professionals retained by Design-Builder for purposes of recovering against Architect or those other design professionals for damages or losses of Owner caused by professional errors and omissions under this clause.

**§ 15.11** The Owner, in order to take advantage of its tax exemption, shall provide the Design-Builder with a copy of its current Tax Exemption letter and shall execute and deliver to the Design-Builder an original Project Exemption Certificate for use by Design-Builder, Contractors, subcontractors, and suppliers in the purchase of materials, equipment and other property for the Project. The sales and/or use tax saved by use of Owner's Tax Exemption will not be included in the Guaranteed Maximum Price established under this Agreement.

**§ 15.12** The Owner agrees to defend, indemnify, and hold harmless Design-Builder, Contractors, subcontractors, and suppliers against any liability for sales tax, compensating use tax, interest, penalty, and attorney's fees incurred as a result of the failure to pay sales or use tax upon the value of materials, equipment or other property purchased by Design-Builder, Contractors, subcontractors, or suppliers in accordance with the procedure set forth in this Agreement. This indemnity shall survive the acceptance of final payment by Design-Builder or other termination of the Agreement.

#### **ARTICLE 16 SCOPE OF THE AGREEMENT**

**§ 16.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 Exhibit A – To be issued at a later date
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Exhibit 1 – Owner Stadium Requirements
- .5 Exhibit 2 – Minor League Facility Standards & Compliance Inspection Procedures
- .6 Exhibit 3 – Non-Discrimination and Equal Employment Opportunity Affirmative Action Program Requirements Statement for Contract or Agreements
- .7 Exhibit 4 – Form of Performance Bond
- .8 Exhibit 5 – Payment

Bond

*(Paragraph Deleted)*

- .9 Exhibit 6 – Phase I and Phase II Activities

This Agreement entered into as of the day and year first written above.

CITY OF WICHITA

J.E. DUNN-EBY, A JOINT VENTURE

By: J.E. Dunn Construction Company

\_\_\_\_\_  
OWNER(Signature)

\_\_\_\_\_  
DESIGN-BUILDER(Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

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# **AIA® Document A141™ – 2014 Exhibit B**

## **Insurance and Bonds**

### **for the following PROJECT:**

*(Name and location or address)*

Entertainment Venue and Multi Sport Stadium

Site bounded by Texas right of way extended east of Sycamore, Maple, Sycamore Streets  
and to the East curbline of existing McLean Street  
Wichita, Kansas

### **THE OWNER:**

*(Name, legal status and address)*

City of Wichita  
455 North Main Street  
Wichita, Kansas 67202

### **THE DESIGN-BUILDER:**

*(Name, legal status and address)*

J.E. Dunn-Eby, a Joint Venture  
1001 Locust Street  
Kansas City, Missouri 64106

### **THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the Eleventh day of December in the year Two Thousand Eighteen .

*(In words, indicate day, month and year.)*

### **TABLE OF ARTICLES**

#### **B.1 GENERAL**

#### **B.2 DESIGN BUILDER'S INSURANCE AND BONDS**

#### **B.3 OWNER'S INSURANCE**

#### **B.4 SPECIAL TERMS AND CONDITIONS**

#### **ARTICLE B.1 GENERAL**

The Owner and Design-Builder agree that Design-Builder shall be entitled to utilize a Controlled Insurance Program for the Project as set forth in the CIP Manual and shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

#### **ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS**

**§ B.2.1** The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.2.1.1 Commercial General Liability** with policy limits of not less than One Million Dollars (\$ 1,000,000 ) for each occurrence and Two Million Dollars (\$ 2,000,000 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

**§ B.2.1.2 Automobile Liability** covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and One Million Dollars (\$ 1,000,000 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

**§ B.2.1.3** The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

**§ B.2.1.4 Workers' Compensation** at statutory limits.

**§ B.2.1.5 Employers' Liability** with policy limits as provided below:

One Million Dollars (\$1,000,000) each occurrence.

**§ B.2.1.6 Professional Liability** covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million Dollars (\$ 5,000,000 ) per claim and Five Million Dollars (\$ 5,000,000 ) in the aggregate.

**§ B.2.1.7 Excess insurance coverage** (Excess of General Liability and Commercial Automobile Liability) of Twenty Five Million (\$25,000,000) each occurrence annual aggregate.

**§ B.2.1.7.1** Not used.

**§ B.2.1.8** The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.2.1.9 Additional Insured Obligations.** The Owner shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

**§ B.2.1.10 Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional

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certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors and the Yes2No, LLC as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### **§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:

- .1 Design-Builder shall furnish the Owner a good and sufficient bond guaranteeing the completion of the Work and every part thereof according to the terms of this Agreement and the agreed plans and schedule; conditioned further for the maintenance of said improvements as hereinbefore provided; and conditioned further, upon holding the Owner harmless in all claims and suites for damages as specified in this Agreement; and
- .2 Design-builder shall furnish a bond to the State of Kansas in the total amount of this Agreement, conditioned upon the payment of all materials and labor bills incurred in the making of said improvement.

*(Table deleted)*

**§ B.2.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### **ARTICLE B.3 OWNER'S INSURANCE**

#### **§ B.3.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### **§ B.3.2 Property Insurance**

**§ B.3.2.1** The Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications, on a replacement cost basis. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Design-Builder shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by Owner and Design-Builder, until the time of Substantial Completion.

**§ B.3.2.1.1** The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake (subject to sublimit), flood (subject to sublimit), windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

**§ B.3.2.1.2** If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ B.3.2.1.3** The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ B.3.2.1.4** Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps

to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ B.3.2.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

**§ B.3.2.3** Not used.

**§ B.3.2.4 Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

**§ B.3.2.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after Substantial Completion property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ B.3.2.6** Before an exposure to loss may occur, the Design-Builder shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.3. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.3.2.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ B.3.2.8** A loss insured under the Design-Builder's property insurance shall be adjusted by the Design-Builder as fiduciary and made payable to the Design-Builder as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

**§ B.3.2.9** Not used.

**§ B.3.2.10** The Design-Builder as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Design-Builder's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and

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Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Design-Builder as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

# **EXHIBIT 1**

## **ENTERTAINMENT VENUE AND MULT SPORT STADIUM**

### **Owner Stadium Requirements**

The stadium shall have the capability to host concerts, community-oriented events, and other sporting events (including but not limited to soccer and boxing, as well as amateur sporting events, including high school and college baseball, high school football and soccer). The stadium will meet the most current version of the Minor League Facility Standards and Pacific Coast League Standards and include the following program elements:

- Fixed seating of approximately 6,500 to 7,000 seats; berm, party and group areas with a capacity of 3,000 to 3,500 people, resulting in a minimum available seating of 10,000 for MiLB games.
- Suites (15-18) with all finishes and fixtures.
- Concession space needed to meet MiLB and Pacific Coast League standards.
- Team facilities including locker rooms, training areas, and ancillary facilities. A "green room" or secondary locker room area for other types of events will be provided.
- Team store(s), merchandising, concessions and box office facilities.
- Press facilities including facilities for writing press, radio broadcast, and television broadcast to include all required broadcast and house A/V equipment.
- State of the art LED video scoreboard and sound system along with cables, press controls, monitors and click effects.
- Playing field and lighting.
- Team office space.
- Hall of Fame Museum.

**END OF EXHIBIT 1**



**MAJOR LEAGUE RULES  
MLR Attachment 58**

**ATTACHMENT 58**

**MINOR LEAGUE FACILITY STANDARDS AND  
COMPLIANCE INSPECTION PROCEDURES**

**Standards**

Unless expressed as recommendations, these facility standards are minimum requirements for all new Minor League facilities. The standards outlined in Sections 11, 12 and 13 are applicable to both new and existing facilities.

**New Facilities**

Any facility that is scheduled for a construction starting date of January 1, 1991 or later shall be considered a "new facility." All plans for new facilities, including construction time schedules, must be submitted to field inspection personnel designated by the Commissioner's Office and the President of the Minor League Association, for review and approval by the field inspection personnel prior to the start of construction. Such review must be completed within 30 days after submission or the plans shall be deemed approved. If such plans meet the standards they shall be approved. Notwithstanding its facility's designation as a "new facility," a Minor League Club that can demonstrate that its new facility construction planning and approval process was at such a stage as of November 17, 1990 that requiring compliance with a minimum new facilities standard (other than those outlined in Sections 11, 12 and 13) will cause it to suffer a material hardship, may apply to the President of the Minor League Association and to the Commissioner or the Commissioner's designee for a variance from such standard.

**Existing Facilities**

Any facility other than a "new facility" as defined above shall be considered an "existing facility." All existing facilities must meet the standards outlined in Sections 11, 12 and 13 (playing field and other team facilities) by no later than April 1, 1995. All plans for additions, alterations or renovations of such facilities, including new turf installations, must be submitted to field inspection personnel designated by the Commissioner's Office and to the President of the Minor League Association, for review and approval by the field inspection personnel (including construction time schedules) prior to the start of construction. Such review must be completed within 30 days after submission or the plans shall be deemed approved. If such plans meet the standards they shall be approved.

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**TABLE OF CONTENTS**

<b>SECTION</b>	<b>1.0</b>	<b>Seating</b>	<b>249</b>
	1.1	Seating Capacity	249
	1.2	Grades of Seating	249
	1.3	Seating Distribution	250
	1.4	Seat Spacing	250
	1.5	Handicapped Accessibility	251
<b>SECTION</b>	<b>2.0</b>	<b>Public Comfort Stations</b>	<b>251</b>
	2.1	Comfort Station Distribution	251
	2.2	Plumbing Fixtures	251
	2.3	Handicapped Accessibilities	252
	2.4	Drinking Fountains	252
	2.5	Public Telephones	252
<b>SECTION</b>	<b>3.0</b>	<b>Concession and Vending</b>	<b>252</b>
	3.1	Concession Areas	252
	3.2	Concession Vendors	252
	3.3	Concession Compliance/Codes and Regulations	253
	3.4	Concession Storage and Novelty Stands	253
<b>SECTION</b>	<b>4.0</b>	<b>Miscellaneous Public Areas</b>	<b>253</b>
	4.1	Stadium Club/Restaurant/Banquet Facility	253
	4.2	Picnic/Beer Garden Facility	253
	4.3	Family Recreation Area	253
<b>SECTION</b>	<b>5.0</b>	<b>Ticket Windows and Entry Turnstiles</b>	<b>254</b>
	5.1	Ticket Windows	254
	5.2	Turnstiles/Entry Positions	254
	5.3	Handicapped Accessibility	254
<b>SECTION</b>	<b>6.0</b>	<b>Security and First Aid</b>	<b>254</b>
	6.1	Security Command Post	254
	6.2	First Aid Station	254
<b>SECTION</b>	<b>7.0</b>	<b>Parking and Facility Access</b>	<b>254</b>
	7.1	Parking Spaces	254
	7.2	Access and Control	255
	7.3	Handicapped Parking	255

**MAJOR LEAGUE RULES**  
**MLR Attachment 58**

<b>SECTION</b>	<b>8.0</b>	<b>Sound System and Scoreboard</b>	<b>255</b>
	<b>8.1</b>	<b>Sound System</b>	<b>255</b>
	<b>8.2</b>	<b>Scoreboard</b>	<b>255</b>
	<b>8.3</b>	<b>Scoreboard Location</b>	<b>255</b>
	<b>8.4</b>	<b>Clock</b>	<b>255</b>
<b>SECTION</b>	<b>9.0</b>	<b>Media Facilities</b>	<b>256</b>
	<b>9.1</b>	<b>Press Parking and Access</b>	<b>256</b>
	<b>9.2</b>	<b>Public Address/Scoreboard Personnel</b>	<b>256</b>
	<b>9.3</b>	<b>Radio Broadcast Booths</b>	<b>256</b>
	<b>9.4</b>	<b>Television Broadcast and Camera Booth</b>	<b>256</b>
	<b>9.5</b>	<b>Print Media Area</b>	<b>256</b>
	<b>9.6</b>	<b>Media Toilet Facilities</b>	<b>256</b>
	<b>9.7</b>	<b>Media Workroom/Lounge</b>	<b>256</b>
	<b>9.8</b>	<b>Handicapped Accessibility to Press Box</b>	<b>257</b>
<b>SECTION</b>	<b>10.0</b>	<b>Administration Area</b>	<b>257</b>
	<b>10.1</b>	<b>Facility Administration Area</b>	<b>257</b>
	<b>10.2</b>	<b>Stadium Personnel Dressing/Locker Facilities</b>	<b>257</b>
	<b>10.3</b>	<b>Team Administration Area</b>	<b>257</b>
<b>SECTION</b>	<b>11.0</b>	<b>Team Facilities</b>	<b>257</b>
	<b>11.1</b>	<b>Home Clubhouse/Dressing Area</b>	<b>257</b>
	<b>11.2</b>	<b>Shower and Toilet Facilities</b>	<b>258</b>
	<b>11.3</b>	<b>Training Room</b>	<b>258</b>
	<b>11.4</b>	<b>Team Laundry Facility</b>	<b>259</b>
	<b>11.5</b>	<b>Team Equipment Room</b>	<b>259</b>
	<b>11.6</b>	<b>Coaches' Lockers</b>	<b>259</b>
	<b>11.7</b>	<b>Field Manager's Office</b>	<b>259</b>
	<b>11.8</b>	<b>Visitors Clubhouse/Dressing Area</b>	<b>259</b>
	<b>11.9</b>	<b>Visitors Shower and Toilet Facilities</b>	<b>259</b>
	<b>11.10</b>	<b>Visitors Training Room</b>	<b>260</b>
	<b>11.11</b>	<b>Visiting Field Manager's Office</b>	<b>260</b>
	<b>11.12</b>	<b>Team Storage (Major League Parent Team)</b>	<b>260</b>
	<b>11.13</b>	<b>Umpire Facilities</b>	<b>260</b>
	<b>11.14</b>	<b>Field/Dugout Access</b>	<b>261</b>
	<b>11.15</b>	<b>Player Parking</b>	<b>261</b>
	<b>11.16</b>	<b>Hitting/Pitching Tunnels</b>	<b>261</b>
	<b>11.17</b>	<b>Pre- and Post-Game Waiting Area</b>	<b>261</b>
<b>SECTION</b>	<b>12.0</b>	<b>Playing Field</b>	<b>261</b>
	<b>12.1</b>	<b>Field Dimensions</b>	<b>261</b>

**MAJOR LEAGUE RULES  
MLR Attachment 58**

	12.2	Playing Surface	261
	12.3	Field Grade	262
	12.4	Field Wall	262
	12.5	Bullpens	262
	12.6	Dugouts	262
	12.7	Field Equipment	262
	12.8	Field Lighting	264
	12.9	Batting Cage Gate	265
	12.10	Backstop	265
	12.11	Playing Field Tarps	265
<b>SECTION</b>	13.0	Maintenance	265
	13.1	Facility Maintenance and Cleanliness	265
	13.2	Field Maintenance	266

**SECTION 1.0 SEATING**

This section establishes standards for the number, type and arrangement of seating in all facilities.

**1.1 SEATING CAPACITY**

Seating capacities shall be established to be appropriate for the size of the Minor League Club's market. Recommended minimum capacities are as listed below. All facilities shall conform with the seating grade, seating distribution and spacing requirements described in sections 1.2, 1.3 and 1.4.

1.1.1	Class AAA Capacity	10,000 seats
1.1.2	Class AA Capacity	6,000 seats
1.1.3	Class A Capacity	4,000 seats
1.1.4	Short-Season Class A/Rookie	2,500 seats

**1.2 GRADES OF SEATING**

In order to enhance the professional atmosphere of the facility, each facility shall provide a minimum of two separate and distinct grades of seating (three separate and distinct grades are recommended). This provision is intended to designate and define general types of seating and not to define pricing or ticketing structures.

**MAJOR LEAGUE RULES  
MLR Attachment 59**

**1.2.1 TYPES OF SEATING**

Seating types shall be defined as in sections 1.2.2, 1.2.3, and 1.2.4.

**1.2.2 BOX SEATING**

Defined as Arm Chair Seats with Backs. Additional seat width and leg room is recommended, with an additional three inches of tread width to be provided as compared to the tread width in the other seating areas. Following the traditional definition of box seating, it is recommended that additional access to smaller groupings of box seats be provided.

**1.2.3 RESERVED SEATING**

Defined as a bench with back as a minimum requirement.

**1.2.4 GENERAL ADMISSION SEATING**

Defined as a bench as a minimum requirement.

**1.3 SEATING DISTRIBUTION**

In no event shall more than 90% of the total seating capacity be General Admission seating. Recommended seating distributions are as follows.

For two grades of seating:

Box or Reserved:	25% of total capacity
General Admission:	75% of total capacity

For three grades of seating:

Box:	25% of total capacity
Reserved:	25% of total capacity
General Admission:	50% of total capacity

**1.4 SEAT SPACING**

The spacing and layout of all seating, aisles, vomitories, cross-aisles and concourses comprising the established exiting system shall conform to all applicable local, state and federal codes and regulations. (NFPA 101 for Assembly Occupancies shall

**MAJOR LEAGUE RULES  
MLR Attachment 58**

be considered the minimum requirement if the facility does not fall under jurisdiction of other regulations.)

**1.5 HANDICAPPED ACCESSIBILITY**

All facilities shall comply with all applicable local, state and federal codes and regulations regarding access of Handicapped patrons and employees. (ANSI A117-1 shall be considered the minimum requirements.)

**SECTION 2.0 PUBLIC COMFORT STATIONS**

This section determines and defines the number of plumbing fixtures and their arrangement at the facilities.

**2.1 COMFORT STATION DISTRIBUTION**

The distribution of the fixtures should be in accordance with the distribution of the seating locations and exiting system to allow minimal walking distances from all parts of the facility to public toilet facilities.

**2.2 PLUMBING FIXTURES**

The minimum plumbing fixture ratios shall be as follows:

Water closets	1:125 Women 1:450 Men
Lavatories (sinks)	1:150 Women 1:150 Men
Urinals	1:125 men

**2.2.1 COMFORT STATION ACCESSORIES**

All public restroom facilities shall provide mirrors, purse shelves (in women's), hand drying facilities and trash cans. It is recommended that a table/platform for diaper changing be located in each restroom.



**MAJOR LEAGUE RULES  
MLR Attachment 58**

**2.3 HANDICAPPED ACCESSIBILITIES**

All facilities shall comply with all applicable local, state and federal codes and regulations (ANSI, A117-1). It is recommended that all facilities provide a minimum of one, unisex h.c. toilet facility per level. This facility shall be similar to a residential bathroom, and allow a h.c. patron to use the facility with the assistance of his/her companion of the opposite sex.

**2.4 DRINKING FOUNTAINS**

All facilities shall provide drinking fountains per local, state and federal codes and regulations.

**2.5 PUBLIC TELEPHONES**

All facilities shall provide telephones per local, state and federal codes and regulations.

**SECTION 3.0 CONCESSION AND VENDING**

The following standards for Concessions and Vending are recommended for all facilities. Many of the conditions may be affected by an existing operational agreement between the facility and concessionaire. It is recommended that these standards be incorporated into any new operational agreement negotiated after the effective date of this PBA.

**3.1 CONCESSION AREAS**

It is recommended all facilities provide 5 lineal feet of counter space (with corresponding support space) per 350 seats in the total facility capacity. The distribution of the concession areas shall be commensurate with the distribution of the patrons to minimize walking distances. [Example:  $12,000 \text{ seats} / 350 = 34.28 \times 5' = 171$  lineal feet of counter. Each stand averages 25' per stand. Therefore, a minimum of 7 stands, distributed throughout the facility are recommended.]

**3.2 CONCESSION VENDORS**

If concession vendors are provided at the facility, the following ratios are recommended: one vendor per 350 seats, with 15 sq. ft. of vending commissary space for each vendor separate from the concession areas.

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**3.3 CONCESSION COMPLIANCE/CODES AND REGULATIONS**

Concessionaires are responsible for compliance with all local, state and federal regulations in regard to Health Standards, Fire Department regulations, power, exhaust and ventilation requirements. The agreement between the facility and concessionaire shall define which party is responsible for required modifications.

**3.4 CONCESSION STORAGE AND NOVELTY STANDS**

The following standards shall be minimum requirements.

**3.4.1 CONCESSION STORAGE**

All facilities shall provide adequate storage for concession inventory. It is recommended that the storage area be of such size to store the inventory necessary to stage the number of games in an average home stand. In the Agreement between the facility and the concessionaire, the concessionaire shall provide empirical data to determine the required amount of storage space.

**3.4.2 NOVELTY STANDS**

Any provided novelty stand(s) acting as a sales point for retail sales shall present products in a professional manner commensurate with standard retail sales areas.

**SECTION 4.0 MISCELLANEOUS PUBLIC AREAS**

**4.1 STADIUM CLUB/RESTAURANT/BANQUET FACILITY**

This type of facility shall be optional.

**4.2 PICNIC/BEER GARDEN FACILITY**

This type of facility shall be optional.

**4.3 FAMILY RECREATION AREA**

This type of facility shall be optional.

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**SECTION 5.0      TICKET WINDOWS AND ENTRY TURNSTILES**

The following Sections 5.1, 5.2, and 5.3 shall be minimum requirements.

**5.1      TICKET WINDOWS**

All facilities shall provide one ticket window for each 1500 seats of total capacity.

**5.2      TURNSTILES/ENTRY POSITIONS**

All facilities shall provide one turnstile or equivalent entry position (minimum of 30" wide) for each 1500 seats of total capacity.

**5.3      HANDICAPPED ACCESSIBILITY**

All facilities shall provide access per all applicable local, state and federal codes and regulations to all public and private areas of the facility. (ANSI A117.1)

**SECTION 6.0      SECURITY AND FIRST AID**

**6.1      SECURITY COMMAND POST**

All facilities shall provide a "command post" for event security forces, centrally located with provisions for removing unruly patrons from the facility.

**6.2      FIRST AID STATION**

All facilities shall provide a first aid station during all events. It is recommended that certified medical personnel staff the station at all events.

**SECTION 7.0      PARKING AND FACILITY ACCESS**

The following Sections 7.1, 7.2 and 7.3 shall be applicable to all facilities.

**7.1      PARKING SPACES**

It is recommended all facilities shall provide public parking spaces at a ratio of 1 space per 3 seats of total capacity. Such parking spaces shall be on-site or within a 10 minute (1/2 mile) walking distance of the stadium.

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**7.2 ACCESS AND CONTROL**

All facilities shall coordinate with local law enforcement officials to provide controlled on-site traffic access, so as to promote a safe and trouble-free access environment.

**7.3 HANDICAPPED PARKING**

All facilities shall conform with all applicable local, state and federal regulations.

**SECTION 8.0 SOUND SYSTEM AND SCOREBOARD**

**8.1 SOUND SYSTEM**

All facilities shall provide an acoustically balanced sound system integrated with the capacity to deliver clear audio messages to the press box, concourses and all public areas within the facility.

**8.2 SCOREBOARD**

All facilities shall provide a scoreboard that provides the following as minimum requirements. All scoreboard characters are to be large enough to be seen throughout the facility.

Line Score  
Ball-Strike-Out  
Player at Bat

**8.3 SCOREBOARD LOCATION**

No part of any scoreboard and/or associated lighted advertising panels may be located within 50' of the center line of the playing field.

**8.4 CLOCK**

All facilities shall provide a time-of-day clock that is in full view of all field personnel from the beginning of batting practice through the close of each game.

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**SECTION 9.0 MEDIA FACILITIES**

**9.1 PRESS PARKING AND ACCESS**

It is recommended that all facilities provide a parking area for all members of the media with direct access to the facility. It is also recommended that parking be provided for television vans and broadcast trucks.

**9.2 PUBLIC ADDRESS/SCOREBOARD PERSONNEL**

All facilities shall provide space in the press box for the public address announcer and scoreboard operator(s). It is recommended that the PA/scoreboard area have a minimum of 50 sq. ft. of floor space in addition to the floor space required for the scoreboard equipment.

**9.3 RADIO BROADCAST BOOTHS**

It is recommended that all facilities provide two radio broadcast booths (home and visitor) that provide a direct view of the entire field and facilitate the broadcast of the game. Each shall provide counters, chairs, power, lighting and telephone jack.

**9.4 TELEVISION BROADCAST AND CAMERA BOOTH**

It is recommended that all facilities provide a spare broadcast/camera booth available for local television broadcasts and local television media. The booth should have a direct view of the entire field with operable windows or closures.

**9.5 PRINT MEDIA AREA**

It is recommended that all facilities provide a separate area for 6 to 10 members of the print media with a direct view of the entire field. Counter, chairs, power, lighting and telephone jack shall be provided.

**9.6 MEDIA TOILET FACILITIES**

It is recommended that all facilities provide media restroom facilities separate from public restrooms, located with direct access to the press box.

**9.7 MEDIA WORKROOM/LOUNGE**

*This type of facility shall be optional.*

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**9.8 HANDICAPPED ACCESSIBILITY TO PRESS BOX**

Facilities shall conform to all applicable local, state and federal codes and regulations for accessibility to the press box. (ANSI-A117.1)

**SECTION 10.0 ADMINISTRATION AREA**

**10.1 FACILITY ADMINISTRATION AREA**

It is recommended that all facilities provide administrative space of 250-300 sq. ft. per person for facility and maintenance operations with separate toilet facilities directly adjacent.

**10.2 STADIUM PERSONNEL DRESSING/LOCKER FACILITIES**

It is recommended that all facilities provide separate dressing/locker facilities (separate for each sex) for all maintenance and event employees (including concession personnel) separate from the public.

**10.2.1 STADIUM PERSONNEL TOILET FACILITIES**

It is recommended that all facilities provide toilet facilities for stadium personnel separate from the public. Direct access to personnel locker rooms is desirable.

**10.3 TEAM ADMINISTRATION AREA**

If the tenant team has a permanent administration area away from the facility, an on-site game day team administration area must be provided. If the team's permanent administration area is at the facility, it is recommended that the area provide 250-300 sq. ft. per person for team operations with adjacent toilet facilities.

**SECTION 11.0 TEAM FACILITIES**

The following shall be minimum requirements.

**11.1 HOME CLUBHOUSE/DRESSING AREA**

The number of lockers provided shall be at least five more than the Club's active player limit for its classification of play. The minimum size of each locker shall be 24" w

**MAJOR LEAGUE RULES  
MLR Attachment 58**

x 72" h (36" w x 72" h is recommended). A lockable storage compartment is recommended for each locker.

Minimum floorspace requirements for the team dressing area shall be as follows:

New facility: 1,000 sq. ft.

Existing facility: 800 sq. ft. (1,000 sq. ft. is recommended)

**11.2 SHOWER AND TOILET FACILITIES**

All facilities shall provide separate shower, drying and toilet areas with the following minimum fixture counts:

New facility:	shower heads:	8 (10 recommended)
	water closets:	2
	urinals:	2
	lavatories:	4 (8 recommended)

**Existing**

facilities:	shower heads:	6 (10 recommended)
	water closets:	2
	urinals:	2
	lavatories:	2 (8 recommended)

**11.3 TRAINING ROOM**

All new facilities shall provide a separate training room of not less than 300 sq. ft. divided into three areas: treatment, whirlpool and rehabilitation. The training room shall have space for 1 or 2 treatment tables, a minimum of 2 whirlpools, hydroculator (4-pack minimum), scale, stationary bicycle, ice machine and an area for 2 or 3 pieces of rehabilitation/weight equipment. The training room shall contain a lockable storage area for training supplies. It is recommended that additional space be provided for a separate office/dressing area for the trainer and team physician. It is also recommended that a valuable storage box be installed in the training room.

All existing facilities shall comply with the above paragraph, with the exception that the minimum square footage requirement shall be 175 sq. ft. (300 sq. ft. is recommended).

**MAJOR LEAGUE RULES**  
**MLR Attachment 58**

**11.4 TEAM LAUNDRY FACILITY**

All facilities shall provide commercial quality laundry facilities (washer and dryer) for the home team to provide daily washing capability. This room may be combined with the Team Equipment Room.

**11.5 TEAM EQUIPMENT ROOM**

All facilities shall provide adequate lockable equipment storage space (minimum of 300 sq. ft. in a new facility) contiguous with the clubhouse.

**11.6 COACHES' LOCKERS**

All new facilities shall provide a minimum of 4 coaches lockers (6 are recommended) in addition to the players lockers. It is recommended these lockers shall be in a separate area from the players lockers. Locker size and floor space requirements (per capita) shall be the same as in the players dressing area.

Existing facilities shall comply with the above paragraph, with the exception that a minimum of 3 coaches lockers are to be provided.

**11.7 FIELD MANAGER'S OFFICE**

All facilities shall provide a field manager's office with direct access to the home clubhouse. It shall include a separate toilet, shower and dressing area, along with a desk and adequate meeting space for 6-8 persons. At existing facilities the separate toilet, shower and dressing area is recommended and not required.

**11.8 VISITORS CLUBHOUSE/DRESSING AREA**

The number of lockers provided shall be at least three more than the Club's active player limit for its classification of play. Minimum floor space requirements shall be as follows:

New facility: 750 sq. ft.

Existing facility: 500 sq. ft (750 sq. ft. is recommended)

**11.9 VISITORS SHOWER AND TOILET FACILITIES**

All facilities shall provide separate shower, drying and toilet facilities with minimum fixture counts as follows:



**MAJOR LEAGUE RULES  
MLR Attachment 58**

New facility:	shower heads:	6 (8 recommended)
	water closets:	2
	urinals:	2
	lavatories:	4

Existing facility:	shower heads:	4 (8 recommended)
	water closets:	2
	urinals:	2
	lavatories:	2 (4 recommended)

**11.10 VISITORS TRAINING ROOM**

All new facilities shall provide a separate training room (minimum of 150 sq. ft.), with space for one training table, one whirlpool, and a hydroculator (4-pack minimum). In existing facilities, this area may be integrated into the players' dressing area, provided that the dressing area is at least 650 sq. ft.

**11.11 VISITING FIELD MANAGER'S OFFICE**

All facilities shall provide a separate office for the visiting field manager. It shall include a separate toilet, shower and dressing area, along with a desk and adequate meeting space for 2-4 people. At existing facilities, the separate toilet, shower and dressing area is recommended and not required.

**11.12 TEAM STORAGE (MAJOR LEAGUE PARENT TEAM)**

It is recommended that all facilities provide a minimum of 300 sq. ft. of lockable team storage, separate from other team storage, with year round access only to the major league team.

**11.13 UMPIRE FACILITIES**

All facilities shall provide a private dressing, shower, and toilet facility for umpires. This area shall provide enough lockers (each a minimum of 36" w x 72" h) to accommodate the number of umpires typically assigned to work in the applicable classification of play. In new facilities, this area shall be a minimum of 200 sq. ft.

**MAJOR LEAGUE RULES  
MLR Attachment S8**

**11.14 FIELD/DUGOUT ACCESS**

It is required that all new facilities and recommended that all existing facilities provide a direct access route to the dugout/playing field. Similar access is to be provided for the umpires.

**11.15 PLAYER PARKING**

It is recommended that all facilities designate a parking area with clubhouse access for players and other uniformed team personnel.

**11.16 HITTING/PITCHING TUNNELS**

It is recommended that each facility provide two covered tunnels for players to practice hitting and pitching in an enclosed environment. If provided, these tunnels should be reasonably close to the home clubhouse with minimal public access.

**11.17 PRE- AND POST-GAME WAITING AREA**

It is recommended that all facilities provide a pre-game and post-game waiting area for families of players and other uniformed personnel.

**SECTION 12.0 PLAYING FIELD**

**12.1 FIELD DIMENSIONS**

Layouts of all new fields (and modifications to existing fields) shall be submitted for approval by the parent Major League Club and the Minor League Club. All field dimensions shall comply with the minimum dimensions specified in Section 1.04 of the Official Baseball Rules.

**12.2 PLAYING SURFACE**

All facilities shall provide a field surface (natural or synthetic) without defects and/or "trip-hazards" that could affect the normal play of the game or jeopardize player safety. Warning track material shall identify all zones within 15' of all walls and fences. This warning track must be of a material to provide visual and tactile notice of a significant change in surface type.

**MAJOR LEAGUE RULES**  
**MLR Attachment 58**

**12.3 FIELD GRADE**

The maximum allowable grade from the base of the pitcher's mound to the warning track in foul territory shall be 6". The maximum allowable grade from second base to the outfield warning track shall be 20".

**12.4 FIELD WALL**

The permanent outfield wall or fence in all new facilities shall be a minimum of 8' high.

**12.5 BULLPENS**

All facilities must provide a bullpen area for each team. These areas may be located in foul territory down the baselines or just immediately outside the field wall. Each must be visible to both dugouts and to the press box. Each shall have two regulation pitching mounds and home plates, adequate distance and clearance for each pitcher and catcher, and a bench for 10 players. If the bullpens are in foul ball areas, care shall be taken to integrate the slope of the pitcher's mound into the field so as not to create a trip hazard for fielders as they approach the bullpen. It is recommended that all facilities have phones connecting the bullpens to the dugouts.

**12.6 DUGOUTS**

All facilities must provide two enclosed dugouts (home and visitor). Each dugout in a new facility must accommodate 25-30 uniformed personnel on a bench with seatback. Each dugout in an existing facility shall accommodate 20-25 uniformed personnel. Each dugout must have a helmet rack for a minimum of 15 helmets and a bat rack for a minimum of 30 bats. It is recommended that a bat swing/storage area be directly accessible to each dugout. It is recommended that each dugout include a refrigerated water cooler (drinking fountain) and provide direct access to a restroom. It is recommended that all facilities have telephones connecting the dugouts to the bullpens and to the press box. All dugouts shall provide as feasible an anti-skid surface as possible on steps and walkways.

**12.7 FIELD EQUIPMENT**

All facilities shall provide the following field equipment. Examples given shall serve as guidelines for equipment quality, and the equipment provided shall meet or exceed the examples specified.

**MAJOR LEAGUE RULES  
MLR Attachment 58**

**12.7.1 BATTING CAGE**

All facilities shall provide a full cover batting cage. New batting cages shall have minimum dimensions of 18' wide, 14' deep and 9' high. It is recommended that the cage be portable and made of an aluminum frame to provide maximum maintainability. Existing batting cages not meeting the above standards may be approved by the parent Major League Club.

**12.7.2 FIELD SCREENS**

All facilities shall provide a pitching screen, first base screen, 2nd base/double play screen, and a shag protector screen. New screens shall have the following minimum dimensions:

Pitching screen: 7' h x 8' w with 4' x 4' notch in upper corner.

Double play screen: 7' h x 14' w with hinged wings.

First base and

shag protector screens: 7' h x 8' w.

All existing screens not meeting the above standards may be approved by the parent Major League Club.

Periodic checks of the batting cage and all screens shall be performed to verify frame and net integrity.

**12.7.3 BATTER'S EYE**

All facilities shall provide a solid monochromatic batter's eye painted in a flat, dark color with minimum dimensions of 16' high and 40' wide centered in the outfield. If a centerfield camera is integrated into the batter's eye, the camera must be the same color as the batter's eye. It is recommended that all new facilities provide a batter's eye with minimum dimensions of 40' high and 80' wide. Any advertising sign abutting the batter's eye shall not include white lettering, a white background, any neon or other lighting or motion effects.

**12.7.4 FOUL POLES**

All facilities shall provide two foul poles of a bright color that are a minimum of 30' high (45' is recommended) with a screen to the fair side of the

**MAJOR LEAGUE RULES**  
**MLR Attachment 58**

pole. No white signs shall be allowed on or immediately adjacent to each side of the foul pole.

**12.7.5 FLAG POLE**

All facilities shall provide a flag pole for the United States Flag or Canadian Flag, as applicable, in clear view of the entire seating bowl.

**12.7.6 SCOREBOARDS, VIDEO MONITORS AND MOTION SIGNS**

In addition to other provisions of these Minor League Facility Standards (including, but not limited to, Section 8.3 (Scoreboard Location)), the President of the Minor League Association, in consultation with the Commissioner or the Commissioner's designee, shall develop and distribute guidelines regarding the use and location of scoreboards, video monitors, LED boards and LED/matrix boards so as not to interfere with play.

**12.8 FIELD LIGHTING**

All new lighting systems shall maintain the following minimum brightness requirements after 100 hours of burning:

Class AAA and Class AA:	100 fc average in infield/ 70 fc average in outfield.
-------------------------	--

Class A and Rookie:	70 fc average in infield/ 50 fc average in outfield.
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The height and location of poles in all new lighting systems shall follow IES standards.

All existing lighting systems shall maintain the following minimum brightness requirements:

Class AAA and Class AA:	70 fc average in infield/ 50 fc average in outfield.
-------------------------	---

Class A and Rookie:	60 fc average in infield/ 40 fc average in outfield.
---------------------	---

**MAJOR LEAGUE RULES  
MLR Attachment 58**

All lighting systems shall operate with a maximum variance ratio of 1.2/1 in the infield and 2/1 in the outfield. The variance ratios shall be computed by comparing the highest and lowest footcandle readings in the infield and the outfield.

**12.9 BATTING CAGE GATE**

All new facilities shall provide a gate large enough to allow the batting cage to be freely taken to and from the playing field.

**12.10 BACKSTOP**

All facilities shall provide a backstop behind home plate. The configuration and dimensions shall vary due to sight-lines for the press box and insurance requirements for the facility. Periodic inspections shall be performed to insure the integrity of the backstop.

**12.11 PLAYING FIELD TARPS**

All Class AAA, Class AA and full season Class A facilities shall provide a full infield tarp and pitcher's mound, home plate, base pit, and bullpen tarps, except that this requirement may be waived by the President of the Minor League Association in the event that the facility is located in an area that does not experience sufficient rainfall to justify the expense of tarps. The tarps shall be oversized to prevent water from running under the edge to a dirt area. The tarps shall be stored in an easily accessible location but in a way not to create a safety hazard on the playing field. Each facility is required to provide adequate manpower to operate the placement and/or removal of the tarps.

**SECTION 13.0 MAINTENANCE**

This section outlines requirements and recommendations for overall maintenance of the facility and playing field in a professional manner.

**13.1 FACILITY MAINTENANCE AND CLEANLINESS**

Each facility shall develop a maintenance program (both short-term and long-term) for use by its maintenance personnel. All public areas shall be completely free of trash and rubbish at the opening of each event, and stadium personnel shall be responsible for cleanliness during the event.

Each facility shall follow its maintenance program for interior repairs and touch-ups to maintain the professional atmosphere of the facility. Long-term maintenance shall be

**MAJOR LEAGUE RULES**  
**MLR Attachment 58**

ongoing in order to detect major facility problems and to minimize potential disruptions to the public.

**13.2 FIELD MAINTENANCE**

The playing field shall be maintained at the highest possible professional level. Every reasonable effort shall be made to insure the safety of the players and the smooth play of the game. The facility shall follow professional grounds-keeping practices and shall utilize proper maintenance equipment. Nail-drag, screens, tamper and rakes are recommended to maintain all dirt areas. Proper turf care equipment (mowers, tractors, etc.) shall be used, and an appropriate maintenance plan shall be developed and followed to care for the playing field.

**13.2.1 PLAYING FIELD RECONDITIONING**

The pitcher's mound and base pit areas shall be reconditioned prior to each game through the use of clay materials and tampers.

**13.2.2 FIELD MAINTENANCE MATERIALS**

All facilities are required to have a sufficient amount of drying material on hand at all times for reconditioning the infield. A chemical drying agent and/or calsonite clay may be used in combination with sand to stabilize areas affected by excessive moisture. Sand may not be the sole drying agent.

**13.2.3 LAYOUT OF PLAYING FIELD**

The entire playing field shall be laid out to coincide with the provisions of Sections 1.04 through 1.08 of the Official Baseball Rules.

**13.2.4 IRRIGATION SYSTEM**

All new facilities shall provide a full field irrigation system as well as water lines 1 1/2" or larger behind both home plate and second base for watering the infield grass and base pit areas. It is recommended that a series of water outlets 1" or larger be distributed around the playing field in order to water the field if the irrigation system should become inoperable. It is recommended that a full-field irrigation system be provided at all existing facilities.

**MAJOR LEAGUE RULES**  
**MLR Attachment 58**

**13.2.5 FIELD DRAINAGE SYSTEM**

All new facilities shall provide an underfield drainage system integrated into the subbase of the turf (natural or synthetic) surface. This system shall be a system of a drain tile fields in a porous collection bed (or similar system) below the turf base.

It is recommended an optimal slope of .5% be maintained from the base of the pitcher's mound to the baselines and from second base to the outfield warning track.



**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

**EXHIBIT**

**3**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry.
  2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission".
  3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency.
  4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency.
  5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation.
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase.
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State.
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
  5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency.
- D. Exempted from these requirements are:
1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
  2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.



## BOND TO THE CITY OF WICHITA

Bond # \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_  
of the State of \_\_\_\_\_ in the City of \_\_\_\_\_ and having authority to do business  
in the State of Kansas, as principal, and \_\_\_\_\_  
a surety corporation of \_\_\_\_\_  
and authorized to do business in the State of Kansas, as surety hereon, are held and firmly bound  
unto the City of Wichita in the just and lawful sum of \_\_\_\_\_  
Dollars, good and lawful money of the United States of America, to the payment of which the  
said principal hereby binds itself, its heirs, administrators, executors, successors, trustees, and  
assigns, and the said surety hereby binds itself, its successors, trustees, and assigns, all jointly  
and severally, firmly by these presents.

Signed, sealed, and dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ A.D.

THE CONDITION OF THE ABOVE OBLIGATION is such that whereas the said  
principal, \_\_\_\_\_  
of \_\_\_\_\_ has this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ A.D. entered into a contract with the City of Wichita to furnish all of the materials  
and labor necessary to construct and complete a certain public improvement in the City of  
Wichita, as follows: \_\_\_\_\_

\_\_\_\_\_ according to the plans  
and specifications therefore, heretofor approved by the City Council of the City of Wichita, and  
on file in the Purchasing Office of the City of Wichita, and within the time and in compliance  
with every provision of said contract, and to maintain the same for a period of \_\_\_\_\_ years  
from date of completion, all in accordance with and as provided in said contract.

NOW THEREFORE if said principal shall well and faithfully and fully comply with all the requirements in the contract for said improvement, and shall complete same according to the terms thereof, and shall maintain said improvement in the manner and form set forth and required by said contract for the period of \_\_\_\_\_ years from date of completion, and shall save and hold the City of Wichita harmless for all claims and suits brought against it, or the City of Wichita for damages to property or injury to persons occasioned by or growing out of the construction of said improvement, or the failure or neglect of said principal to carry out said contract, or to complete and maintain said improvement and the works thereon as provided by the terms and provisions of said contract, then in that case, the obligation to be void; otherwise to be and remain in full force and effect.

The said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, The said principal has executed and surety has caused these presents to be signed by its duly authorized Attorney-In-Fact the day and year herein written.

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
(Signature)

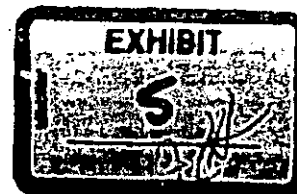
\_\_\_\_\_  
(print or type name and title)

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Surety

Approved as to form: \_\_\_\_\_

By \_\_\_\_\_



# BOND TO THE STATE OF KANSAS

## STATUTORY PAYMENT BOND

(G.S. Kan. 60-1111, as amended)

Bond # \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_

\_\_\_\_\_

as Principal, and \_\_\_\_\_

\_\_\_\_\_

as Surety, are jointly and severally bound unto the State of Kansas in the sum of \_\_\_\_\_

\_\_\_\_\_

Dollars (\$ \_\_\_\_\_), for the use and benefit of persons entitled thereto for which  
Payment shall well and truly be made, we hereby bind ourselves, our successors, heirs and  
executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT

WHEREAS, the said \_\_\_\_\_

has entered into a written contract with the City of Wichita, Kansas, for certain work in  
connection with the \_\_\_\_\_

District Court Bond # \_\_\_\_\_

Wichita, Kansas, under date of \_\_\_\_\_

NOW, THEREFORE, if the said Principal or the subcontractor or subcontractors of said Principal shall pay all indebtedness incurred for labor furnished, materials, equipment, or supplies used or consumed in connection with or in or about the construction of or in making such public improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(print or type name and title)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-In-Fact

**EXHIBIT 6**  
**ENTERTAINMENT VENUE AND MULTISPORT STADIUM**

**Phase I Activities**

The Design-Builder shall perform the following activities in Phase I:

1. Preliminary design and preparation of schematic design.
2. Develop execution plan and project schedule.
3. Produce design reports for regulatory approval.
4. Participate in meetings with public regulatory agencies, councils, boards, committees and stakeholders.
5. Identify Project permitting requirements and initiate permitting activities.
6. Identify third-party inspection firms required.
7. Complete platting and required zoning reports.
8. Preliminary engineering.
9. Engineering for excavation and underground site utilities to permit set.
10. Geotechnical investigation.
11. Develop interest from Contractors for excavation and underground site utilities work.
12. Prepare bid packages for excavation and underground site utility work.
13. Bid excavation and underground site utility work.
14. Identify interest from appropriate Contractors for Phase II GMP contracts for best in value selection process.
15. Prepare best in value bid packages.
16. Bid best in value trade packages for GMP Contractors.
17. Evaluate best in value Contractors with City representatives.
18. Contract with best in value Contractors.
19. Prepare GMP Amendment No. 1 for excavation and underground site utility work.
20. Review of Owner's environmental investigation.
21. Traffic control.
22. Design Drawings to 30% level. The Design Team shall produce a GMP based upon 30% design which will include fees for the design and construction activities for the balance of the project. The GMP to be prepared in accordance with the Agreement.
23. Prepare a Project cost model and provide detailed cost estimates as the design and design alternatives are advanced. Project cost to be reviewed with Owner no less than once a week.
24. Complete final master plan of the venue site, including final siting of the stadium. Master plan limits should extend to the Arkansas River edge.
25. Produce maps, drawings, and graphics necessary for committee meetings, City Council, Project Committee, and other public meetings.
26. Develop the Project critical path method schedule.
27. Identify potential project savings.
28. Ensure compliance with MiLB and Pacific Coast League standards.

## **Phase II Activities**

The proposed Phase II plan is based on the Project's 30% Design, the GMP price, and the Project Schedule, and shall include supporting documentation, such as detailed open-book consisting for the GMP price. Phase II services generally encompass completing the Project's final design, construction, commissioning, submitting as-builts and project closeout. Permitting activities are included in each Phase.

With consideration of the aforementioned objectives the Design-Builder will:

1. Produce maps, drawings, and graphics as reasonably necessary for committee meetings, City Council, Project Committee, and other public meetings.
2. Develop the Project critical path method schedule.
3. Develop design and construction documents for ballpark, museum, utility infrastructure and street network.
4. Coordinate all shutdown, sizing and location issues with the appropriate utility provider.
5. Develop and reconcile construction cost estimates at each phase of design.
6. Identify potential cost and schedule risk factors and develop and implement mitigation plan.
7. Cost monitoring and reporting.
8. Identify potential project savings.
9. Ensure compliance with MiLB and Pacific Coast League standards.
10. Adhere to all regulations pertaining to the construction of the Project including, but not be limited to, all City ordinances and regulations pertaining to site restoration, clean-up and the mitigation of detrimental storm water runoff.
11. Obtain all necessary permits for the construction of the Project.
12. Develop Contractor bid packages.
13. Manage bid phases.
14. Design-to-budget and submittal of GMP.
15. Provide project management services.
16. Prepare construction schedules; pay all vendors, contractors and all other involved parties. The Design-Builder shall manage the project safety program and provide appropriate project permits and reviews. The Design-builder will also maintain the appropriate bonding and insurance as specified by the City's purchasing ordinances. The Design-Builder will adhere to all policies governing site safety and environmental compliance.
17. Procure all equipment. The Oversight Committee and Project Committee reserves the right to have final approval over all recommended equipment.
18. Install webcams.
19. Maintain and update project schedule to maintain the required completion date.
20. Progress meetings on a weekly basis and attended by the Design-Builder and Project Committee.
21. City will provide a Resident Project Representative to perform limited oversight services. This cost must be included in the overall budget.
22. Track and manage project costs and finances.
23. Provide equipment and personnel.

24. Provide as-built drawings and written specifications for the Project. The as-built drawings shall be electronically plotted on standard 30"x42" sheets. The specification shall be on standard 8.5"x11" sheets and compiled in one document. One copy shall be provided as an electronic file in AutoCAD.dwg format and one copy in a PDF format. These electronic files shall be provided via flash drive, or other acceptable media agreed upon by the Owner. As-built drawings will be updated weekly during Project completion and made available for inspection by the Owner as requested.
25. Facility commissioning.
26. Close-out projects/phases.
27. Warranties and certifications.
28. Operations and Maintenance Manual and Procedures.
29. The Project and its individual components shall carry a warranty for a minimum period of one (1) year from Substantial Completion.

**END OF EXHIBIT 6**